IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.4395 OF 2007
IN
SUIT NO.526 OF 2003

Housing Development Financial
Corporation Ltd. ....Plaintiff
Versus
Maitra Ram Shitangshu & Ors.. ...Defendants.

.....

Mr. C. M. Lokesh i/b. Lex, Forum for the Plaintiff.
None for the Defendant.
Mr. V.J. Rane, representative of the Court Receiver present.

.....

CORAM : DR. D.Y. CHANDRACHUD, J.

December 19, 2007.

P.C.:

The suit is for the recovery of an amount of Rs.37,00,202/-. A hosing loan was granted by the Plaintiff to the First and Second Defendants, while the Third Defendant is a guarantor. A residential flat has been mortgaged in favour of the Plaintiff. Cheques issued by the Defendants were dishonoured. On 17th December 2003, a Learned Single Judge of this Court while noting the aforesaid fact,

allowed the Notice of Motion taken out by the Plaintiff for the appointment of a Receiver. The Court Receiver was directed to permit the First and Second Defendants to continue in occupation of the flat as his agents without security, but on payment of royalty.

In the present Notice of Motion, the Plaintiff has sought to enforce its security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The leave of the Court has been sought to initiate proceedings since the property is custodia legis. In the affidavit in support of the Motion, it has been stated that the Court Receiver had fixed ad-hoc royalty of Rs.10,000/- per month on 10th December 2007 and had called upon the First and Second Defendants to pay over this amount from the date of the order of the Court, namely, 17th December 2003. It has been stated in paragraph 6 of the affidavit in support that the Court Receiver took physical possession on 21st April 2005 since the First and Second Defendants failed to comply with the directions and the arrears of royalty had mounted to Rs. 1.60

lakhs.

There is no reason why the prayer which has now been made before the Court for permitting the Plaintiff to take recourse to its rights under the Securitization Act should not be granted. The Defendants have failed to respond to the Notice of Motion despite having been served. An affidavit of service has been filed. The Notice of Motion is accordingly made absolute in terms of prayer clauses (a) to (d).

....